

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HERMAN WYATT

Claimant

VS.

CITY OF TOPEKA

Respondent,
Self-Insured

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Docket No. 253,497

ORDER

Claimant appealed the May 17, 2000 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for neck and right shoulder injuries allegedly sustained on February 17 and 21, 2000, while claimant was working for respondent. Respondent authorized medical treatment for claimant's neck but denied treatment for the right shoulder. After hearing claimant testify at the May 10, 2000 preliminary hearing and after reviewing the medical records introduced at that hearing, Judge Benedict denied claimant's request for medical treatment on the basis that claimant did not sustain an accidental injury. It is not clear from the Order whether the Judge found that claimant did not sustain an accidental injury to his neck or whether the finding was only limited to the right shoulder.

Claimant contends the Judge erred and argues that respondent stipulated that claimant sustained an accidental injury. Claimant argues that the issue submitted to the Judge was not whether claimant sustained an accidental injury but, instead, whether claimant injured or aggravated the right shoulder in the February 2000 accidents.

In its brief to the Appeals Board, respondent concedes that claimant sustained accidental injury and that it has authorized treatment for claimant's neck. The only issue raised at this time by respondent is whether the right shoulder was injured in either of the accidents. Respondent argues that claimant did not injure his right shoulder in the February 2000 incidents and that claimant had right shoulder symptoms before either incident occurred.

The only issue before the Appeals Board on this review is whether claimant injured or aggravated the right shoulder on either February 17 or 21, 2000.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the record compiled to date, the Appeals Board finds the Order should be modified to find that claimant did sustain personal injury by accident arising out of and in the course of employment with respondent.
2. Claimant injured his neck on or about February 17 and 21, 2000, while working for respondent. At the time of both incidents, claimant was lying horizontally on the floor repairing a pump. The incidents caused neck pain that radiated into both shoulders.
3. Claimant has a history of right shoulder injury going back to 1994 when he injured the right rotator cuff. Shortly before the February 2000 incidents, claimant had requested the respondent to provide medical treatment for his shoulder. But those requests were denied.
4. Claimant alleges that he also injured his right shoulder in the February 2000 incidents. Claimant testified that following the February 2000 incidents his right shoulder was worse as the pain was more severe and he had increased loss of flexibility and movement.¹ But Dr. Gerard Coulon, the physician who saw claimant for his injuries on February 21, 29, and March 9, 2000, wrote a letter to respondent dated April 10, 2000, that claimant did not re-injure his shoulder. In that letter, the doctor wrote:

It is my medical opinion that Mr. Wyatt did not re-injure his shoulder when he was seen by me on 2/21/00 for his cervical injury. If you have any questions, please call.

5. For unexplained reasons, on February 24, 2000, Dr. Coulon amended his February 21, 2000 office notes to record that claimant specifically told him that the February 21, 2000 incident was not related to his right shoulder injury. The doctor's addendum reads:

This patient presented on 2/21/00 with the complaint of having pain to his neck from a work injury. The patient states that he was lying on his back, twisting a wrench when the pain developed. The patient also gave a history of having a rotator cuff injury several years ago for which [he] is followed by Dr. Knappenberger. This patient states that the injury occurred today, is not related to his rotator cuff injury. The patient was questioned in detail about the shoulder injury and the neck injury and without a doubt he felt that the injury today was not related to his shoulder.

¹ Preliminary Hearing, May 10, 2000; p. 14.

6. On February 29, 2000, claimant saw Dr. Kurt R. Knappenberger for the right shoulder. But the record compiled to date does not contain Dr. Knappenberger's opinion as to whether claimant's present need for medical treatment to the right shoulder was related to the February 2000 incidents or some other cause.

7. Although the unexplained addendum to his office notes raises suspicions, at this juncture of the proceeding Dr. Coulon's is the only expert medical opinion in evidence regarding whether claimant injured his right shoulder in the February 2000 incidents. That being the case, the Appeals Board is compelled to affirm the Judge's finding and conclusion that claimant has failed to prove that he injured or aggravated his right shoulder in the February 2000 incidents.

8. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.²

WHEREFORE, the Appeals Board modifies the May 17, 2000 preliminary hearing Order and finds that claimant sustained a compensable accidental injury to his neck but that claimant has failed to prove, based upon the record compiled to date, that claimant sustained a compensable accidental injury or aggravation to his right shoulder.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

c: John M. Ostrowski, Topeka, KS
Larry G. Karns, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

² K.S.A. 1999 Supp. 44-534a(a)(2).